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Year: 2011

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## **Four paradoxes of human dignity**

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ZORA URL: <https://doi.org/10.5167/uzh-50570>

Book Section

Originally published at:

Andorno, Roberto (2011). Four paradoxes of human dignity. In: Joerden, Jan. Menschenwürde und moderne Medizintechnik. Baden-Baden: Nomos, 131-140.

## ***Four paradoxes of human dignity***

**Roberto Andorno**

In recent years the notion of human dignity has become the center of an important debate in the fields of bioethics and biolaw. Much of the discussion is about the *meaning* of this notion, about the *role* that it plays or should play in this area, about its real *utility*, and about the risk of *misusing* it as a merely rhetorical concept.

Currently, the concept of human dignity is torned between the emphatic support it receives from the legal system, and its contentious reception by philosophical scholars. It should be noted that the notion of human dignity is already at the foundation of the international human rights system which emerged in the aftermath of the Second World War. Recent intergovernmental instruments relating to bioethics assign even a greater role to human dignity, which is presented as the ultimate rationale behind the new rules settled in this area. This trend is impressive enough to lead scholars to view dignity as "the shaping principle" of international bioethics<sup>1</sup>. Far from representing a shift merely in style, the higher profile accorded to this notion in bioethics is seen as a true shift in substance that needs to be carefully considered.<sup>2</sup>

But on the other hand, a number of scholars have in recent years raised serious criticisms against the recourse to the notion of human dignity, which they regard as too vague, or purely rhetorical or political, or even useless for solving specific bioethical dilemmas. These objections have led to an important debate about the meaning, usefulness, and rational justification of this notion.

The purposes of this paper are, first, to point out the striking contrast between the central role assigned to human dignity in international biolaw, and the controversial reception of this principle in philosophical bioethics; second, to claim that the paradoxical features of the notion of human dignity may, in a first stage, explain the difficulty in grasping its meaning and role; and finally, to argue that those same paradoxes, if well examined, far from obscuring the meaning of the notion of human dignity, bring the full weight of its significance (III).

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<sup>1</sup> Noëlle Lenoir, Bertrand Mathieu, *Les normes internationales de la bioéthique*, Paris, PUF, 1998, p. 16.

<sup>2</sup> Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw*, Oxford, Oxford University Press, 2002, p. 29.

## I. Human dignity between law and philosophy

The emphasis on human dignity is very visible in recent intergovernmental instruments relating to bioethics, which constantly appeal to human dignity as the ultimate ground of their provisions. This can be observed, for instance, in the three UNESCO declarations relating to bioethics: the Universal Declaration on the Human Genome and Human Rights (1997), the International Declaration on Human Genetic Data (2003), and the Universal Declaration on Bioethics and Human Rights (2005). If we focus our attention on the 2005 Declaration we will notice that respect for human dignity embodies not only the central aim of the Declaration (Art. 2.c), but that it is also presented as the first principle governing the field of biomedicine (Art. 3), as the main argument against discrimination (Art. 11), as the framework within which cultural diversity is to be respected (Art. 12), and even as the interpretative criterion of all the provisions of the Declaration (Art. 28).

The European Convention on Human Rights and Biomedicine (1997), or “Oviedo Convention”, is another important example of the recourse to human dignity. According to its Explanatory Report, “the concept of human dignity (...) constitutes the essential value to be upheld. It is at the basis of most of the values emphasized in the Convention”<sup>3</sup>. The title itself of the Convention in its complete form includes this notion.<sup>4</sup> The Preamble mentions dignity three times: the first, when it recognizes “the importance of ensuring the dignity of the human being”; the second, when it recalls that “the misuse of biology and medicine may lead to acts endangering human dignity”; the third, when it expresses the resolution of taking the necessary measures “to safeguard human dignity and the fundamental rights and freedoms of the individual with regard to the application of biology and medicine.” The purpose itself of the Convention is formulated appealing to human dignity. According to Article 1, such purpose is “to protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine”. Also Article 2 of the Convention is interesting in this respect because it offers a direct corollary

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<sup>3</sup> See Paragraph 9. Recalling the history of the Convention, Ms Johanna Kits Nieuwenkamp, former member of the drafting commission, affirms that “it was soon decided that the concept of dignity, identity and integrity of human beings/individuals should be both the basis and the umbrella for all other principles and notions that were to be included in the Convention” (“The Convention on Human Rights and Biomedicine”, in: J. Dahl Rentdorff and P. Kemp (ed.), *Basic Ethical Principles in European Bioethics and Biolaw*, vol. II, Report to the European Commission, Center for Ethics and Law, Copenhagen, and Institut Borja de Bioètica, Barcelona, Guissona (Catalonia), Barnola, 2000, p. 329

<sup>4</sup> Convention for the protection of human rights and *dignity* of the human being with regard to the application of biology and medicine.”

of the idea of human dignity: *the principle of primacy of the human being over science and society*. This principle embodies the idea that every individual, every patient, even the gravely ill one, every research participant, *has unconditional value, and therefore* should not simply become *instruments* for the benefit of science or society.

The key role attached to human dignity in international norms relating to bioethics is not surprising if one notices that dignity is “one of the very few common values in our world of philosophical pluralism”<sup>5</sup>, to such an extent that today most people assume, as an empirical fact, that human beings have intrinsic worthiness. This common intuition has been called the “Standard Attitude”.<sup>6</sup>

Nevertheless, the great value that international law assigns to human dignity is in open contrast with the much more controversial reception of this notion in philosophical bioethics. Some criticize the recourse to dignity as purely rhetorical, or as an easy means to condemn some potential undesirable uses of biotechnology (for instance, human cloning) when other arguments fail.<sup>7</sup> Furthermore, the notion of human dignity would be unable to play any normative role in bioethics because it is flawed by inherent vagueness which allows its use for supporting totally different and even opposed positions, as it happens, for instance, in the debate about euthanasia and assisted suicide. Other scholars denounce that dignity is often used as “mere rhetorical dressing, adding little more to the policy debate than the weight or cachet of the concept”.<sup>8</sup> In even more provocative terms it is argued that “dignity is a useless concept in medical ethics and can be eliminated without any loss of content” because it means no more than respect for persons or their autonomy.<sup>9</sup>

How can this serious divergence between legal norms and academic philosophical reflection be explained? The next section aims to argue that this contrast is in part due to the fact that the concept of human dignity entails several paradoxes.

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<sup>5</sup> See Herbert Spiegelberg, “Human Dignity: A Challenge to Contemporary Philosophy”, in *Human Dignity. This Century and the Next*, ed. R. Gotesky and E. Laszlo, New York, Gordon and Breach, 1970, p. 62.

<sup>6</sup> Dan Egonsson, *Dimensions of Dignity. The Moral Importance of Being Human*, Dordrecht, Kluwer, 1999, p. 34.

<sup>7</sup> See Ulfrid Neumann, “Die Tyrannei der Würde”, *Archiv für Recht und Sozialphilosophie*, 1998, 2, p. 153.

<sup>8</sup> Timothy Caulfield and Andrew Chapman, “Human Dignity as a Criterion for Science Policy”, *Plos Medicine*, 2005, 2(8), p. 736-738. Available online at: [www.plosmedicine.org](http://www.plosmedicine.org)

<sup>9</sup> Ruth Macklin, “Dignity is a useless concept”, *British Medical Journal*, 2003, vol. 327, p. 1419-1420.

## II. The paradoxes of human dignity

### 1. The first paradox: the priority of praxis over theory

The first paradox posed by the idea of human dignity is the strong contrast between the *practical* and the *theoretical* approaches to it. From a *practical* point of view, it seems well that no civilized social system would be possible if people were denied the recognition of their intrinsic worth and of the basic rights that derive from it. This means that the recognition of human dignity and human rights is, first of all, the result of a very *practical need*. We know by historical experience that every time that society abandons the idea of inherent dignity it inevitably falls, soon or late, into barbarism.<sup>10</sup> Thus, there are very concrete reasons for affirming by law the principle according to which each individual deserves unconditional respect by the mere fact of being human.

However, from a *theoretical* perspective, it is extremely difficult to justify human dignity (and perhaps to justify any objective moral principle) without having recourse to some metaphysical notions (such as human good, human nature, the spiritual dimension of human beings, etc.). We live in postmodern times that strongly reject any substantive philosophical reflection on these fundamental issues that have occupied philosophers for centuries.<sup>11</sup> This is a paradox because we know by experience that we dramatically need the idea of human dignity, but we do not exactly know how to justify it.

This same paradox was pointed out fifty years ago by the French philosopher Jacques Maritain. Having been involved in the preparatory work of the Universal Declaration of Human Rights (thereafter, UDHR), he could not hide his astonishment at the fact that people with the most different political, cultural and religious backgrounds were able to agree on the fundamental rights to be respected. He wrote that “[a universal agreement on human rights] can be achieved, not on common speculative notions, but on common practical notions, not on the affirmation of the same conception of the world, man and knowledge, but on the affirmation of the same set of convictions concerning action”.<sup>12</sup>

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<sup>10</sup> "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind..." (Universal Declaration of Human Rights, 1948, Preamble).

<sup>11</sup> The antimetaphysical assumptions that dominate contemporary thinking can, of course, be critically examined. If we are really *rational* beings, why would our reason be unable to reach, at least, some approximate truths? If we possess not only a *theoretical*, but also a *practical* reason (ie, the use of reason concerning action), why would it be impossible for us to identify some basic goods (life, physical integrity, freedom, etc.) and to deduce from those goods some ethical principles that should govern human relationships? However, this fundamental issue goes far beyond the purpose of this paper.

<sup>12</sup> See *L'Homme et l'Etat*, Paris, Presses Universitaires de France, 1953, p. 69-71. See also *Les droits de l'homme*, Paris, Desclée de Brouwer, 1989, p. 117.

Considering this priority of practical needs over theoretical speculation, one might ask: if the international community has already reached a consensus on the need to respect human dignity and human rights, why caring about the ultimate foundation of such notions? Has this latter speculation not become superfluous at present?<sup>13</sup>

Personally, I think that the foundational question has not become superfluous, since it is still far from clear that agreement alone suffices to *justify* human dignity and human rights. First, because consensus is a very fragile foundation: today's accord may disappear tomorrow. Second, and more importantly, because the merely contractualist explanation of dignity and rights offers a very superficial, if not wrong, picture of these rich concepts. In reality, we do not respect people simply because we have formally agreed on that, that is, simply because some laws or international agreements require such respect. Rather it is the other way round: those laws and treaties have been adopted precisely because we think that respecting people is the *right* thing to do. The moral requirement of respect for persons is previous to its recognition by law.

## 2. The second paradox: the *ex negativo* approach

Another paradox, which is very closely related to the previous one, is that the meaning of dignity is easier to grasp when we consider what is *contrary* to dignity rather than what is in conformity with it. Evil is easier to recognize than goodness. It is indeed when we are confronted to the worst things that can be done to someone that we better understand, by contrast, what "dignity" means. This is why this notion is often characterized in negative terms, for instance, by saying that it embodies the idea that "there are some things that should not be done to anybody, anywhere",<sup>14</sup> or that people must "*never* be treated in a way that denies the distinct importance of their own lives".<sup>15</sup> Even the Kantian categorical imperative according to which no one is to be treated as a mere means to another's end can be regarded as example of this *via negativa*.

It is indeed paradoxical that we begin to get the picture of human dignity by considering those behaviours that seriously disregard it: torture, slavery, degrading treatments, inhuman working conditions, etc. These situations of extreme humiliation help us to become aware that human dignity is a very real requirement of human interaction and not a merely metaphysical hypothesis.

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<sup>13</sup> See Norberto Bobbio, *The Age of Rights*, Cambridge, Polity, 1996.

<sup>14</sup> Mary Midgley, "Towards an ethic of global responsibility", in: Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 1999, p. 160.

<sup>15</sup> Ronald Dworkin, *Life's Dominion. An Argument About Abortion, Euthanasia and Individual Freedom*, New York, Vintage, 1994, p. 236.

Perhaps this experiential approach is unable to offer any academic definition, but provides us with a vivid experience of what it means to have a dignity which is disregarded in dehumanizing treatment.

It is not by chance that, while most human rights are couched in positive terms (“Everyone has the right to...”), there are a few ones, those that aim to protect people against the most serious violations of human dignity, that are formulated in *negative* terms, as prohibitions: “No one shall be held in slavery or servitude”; “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Articles 4 and 5 of the UDHR, respectively). The difference is not merely semantic, but has significant practical implications: the rights framed in negative language are regarded as *absolute*, in the sense that they are not subject to any exceptions, while most rights can be limited in certain circumstances, provided that restrictions are necessary and are a proportionate way of achieving a legitimate purpose.<sup>16</sup>

### **3. The third paradox: human vulnerability**

A third paradox is that human dignity may become more visible in weakness than in power, in vulnerability than in self-sufficiency. It may indeed be more patent in the most vulnerable human beings: in newborns, in small children, in the elderly, in the sick, and in the poor. This is paradoxical because human dignity has been traditionally associated with the highest rational capacities, with the human power to dominate nature, with autonomous decision-making capacity. But in the most vulnerable (for instance, patients, who are in need of help or who are dying), the dignity is not hidden by intellectual or physical abilities, or good health, or beauty. As a matter of fact, medical practice is constantly confronted with the human being in its nakedness, in its simple existence, and is required to discover the value of every patient in that context. Health care professionals are well aware that if they want to perform their job adequately, they must keep in mind that each patient, no matter what his or her diagnosis, is not a ‘case’ or a ‘disease’, a room number, but a *person* with a unique character.

Incongruously, modern medical science is focused in an almost obsessive way in reducing human vulnerability and disease as if they were the absolute evil to be eradicated. Instead of viewing human vulnerability as an intrinsic element of existence, it tends sometimes to treat it as a merely technical fact that could be overcome simply through more technological progress. This approach is utopian

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<sup>16</sup> “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Art. 29.2 of the UDHR).

because the possibilities of science are limited, and will be always be limited, in spite of all the scientific advances that can be done, at least by the fact that we are mortal beings. Science is radically unable to solve the problem of human existence as a whole; science is unable to respond to our search for the sense of life. Of course medicine has to fight disease and reduce its negative impact on our lives as much as possible, but without falling into the mistake of thinking that a life without self-sufficiency is meaningless and no more worth living. Rather on the contrary, it should regard vulnerability as a constituent element of human existence. This more holistic approach to health care can certainly contribute to help people suffering from serious diseases to give sense to their situation, especially when no treatment is available.

#### **4. The fourth paradox: the technological mastery over human nature**

The fourth paradox is related to the idea of a human's mastery of nature by means of technological developments, which in the end leads to dominion over human nature itself. As Kurt Bayertz has rightly pointed out, the fact that human beings become master over their own nature necessarily implies that they are reduced to an object of their own subjectivity<sup>17</sup>. They are at the same time "subjects" and "objects", and the increase of human subjectivity leads paradoxically to an increase of human's objectivation. It is true that the notion of a human's dominion over the earth is not new. At least, in the Western world, it has always been part of the Judeo-Christian heritage. The first chapter of the Book of Genesis is explicit in this respect.<sup>18</sup> In this context, the special role of humans in relation to nature has traditionally been regarded as an expression of human dignity.

However, since the 17th and 18th century, the idea of man's supremacy over nature, patterned after the thinking of Descartes, Bacon, and Condorcet, took a totally different significance. Man was no more regarded as the *steward* of nature with special responsibilities for taking care of the earth and living beings, but he became the *master* of nature in the full sense of the word, that is, he was invested with absolute dominion over every living being, including himself.<sup>19</sup> In this way, science and technology, which have always been regarded as expressions of the very special worth of human beings, risk at present blurring the sharp boundaries

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<sup>17</sup> Kurt Bayertz, "Human Dignity: Philosophical Origin and Scientific Erosion of an Idea", in: K. Bayertz (ed.), *Sanctity of Life and Human Dignity*, Dordrecht, Kluwer, 1996, p. 88. See also from the same author: "Die Idee der Menschenwürde: Probleme und Paradoxien", *Archiv für Recht- und Sozialphilosophie*, 1995, vol. 81, n° 4, p. 465-481.

<sup>18</sup> "Then God said: 'Let us make man in our image, after our likeness. Let them rule over the fish of the sea, the birds of the air, and the cattle, and over all the wild animals and all the creatures that crawl on the ground.' " (Gen. 1.26).

<sup>19</sup> William Leiss, *The domination of nature*, Montreal, McGill-Queen's University Press, 1994, p. 45-52.



between humankind and nature, and therefore, eroding the notion of dignity itself. This places us in a strange situation, especially if we note that the technological control over our nature is, in practice, not a control over ourselves, but over *those who will succeed us*.

In recent years, Jürgen Habermas has pointed out this same problem with regard to preimplantation genetic diagnosis and germline interventions, which, he argues, risk leading us to a new form of domination of some individuals over others, that is, to an unfair control of future generations by the present generation. According to him, what is at stake in this field is nothing less than our self-understanding as *subjects* and not as mere *objects* produced by others. This is why he calls for a self-restraining of our emerging technological powers in order to preserve the freedom of future individuals, and the integrity of humanity as such.<sup>20</sup>

## Conclusion

The paradoxical aspects of the idea of human dignity, far from being problematic, are very helpful, and maybe necessary, to better understand the meaning of this notion. These paradoxes could perhaps also contribute to explain why it is so difficult, or maybe impossible, to define dignity with great precision, and that the best we can do with this concept, is to try to approach it with the help of comparisons, analogies and examples, in an intuitive manner. This is not because dignity is an empty idea, but on the contrary, because it is too rich to be encapsulated in a definition. After all, if dignity refers to the unique value of every human being, how could such uniqueness be defined? Definitions are always generalizations that try to gather the properties that several entities have in common; but they are unable to cover what is unique or irreplaceable. But precisely this is one of the key ideas that the notion of dignity tries to express. It refers, not to a general and abstract human individual, but to this-concrete-human being who is in front of us.<sup>21</sup>

Therefore, if our postmodern times make it problematic to begin from the "top", that is, from metaphysical or too abstract concepts to reach the idea of human dignity, perhaps the best we can do is to begin from the "bottom", namely from concrete relationships to other individuals as particular persons with distinctive needs. This kind of experiential approach can be found, for instance, in Emmanuel Levinas' writings. He claims that ethics emerges primarily on the concrete level of the relationship from person to person and, for this reason, the

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<sup>20</sup> Jürgen Habermas, *Die Zukunft der menschlichen Natur. Auf dem Weg zu einer liberalen Eugenik?* Frankfurt, Suhrkamp, 2001.

<sup>21</sup> The same happens with the concept of "person". In fact, it can be argued that person and dignity are synonymous notions. Person is not a merely descriptive concept, but a valorative one, a *nomen dignitatis*.

contemplation of the human face is one of the most significant ways to discover the incommensurability of each individual. The relation to the face is "a relation with the other absolutely other, which I cannot contain, with the other in this sense infinite"<sup>22</sup>; the face of the other resists our power to assimilate him or her into mere knowledge. The face of the other silently remembers us the command: "you shall not commit murder"<sup>23</sup>. This approach does not find the moral "ought" inscribed within the laws of the cosmos. In other words, responsibility for the other is born primarily in the face to face situation and not in purely theoretical knowledge. This is why it does not commit any "naturalistic fallacy", because the starting point is not an "is" but already an "ought". Perhaps a more experiential approach like this (or similar ones), which take as starting point concrete human beings with their hopes and sufferings, could be able to bring a refreshed view of human dignity.

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<sup>22</sup> Emmanuel Levinas, *Totality and Infinity*, The Hague, Nijhoff, 1969, p. 197.

<sup>23</sup> *Ibid.*, p. 199.